

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

**Ref. Docket Nos. 11, 100 & 125**

**NOTICE OF FILING OF PROPOSED EQUIPMENT SALE ORDER**

**PLEASE TAKE NOTICE** that, on January 11, 2023, the above-captioned debtor and debtor in possession (the “Debtor”), filed the *Debtor’s Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor’s Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor’s Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtor’s Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* [Docket No. 11] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that on January 26, 2023, the Court entered the *Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor’s Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief* [Docket No. 100] (the “Bidding Procedures Order”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that on January 27, 2023, in connection with the Bidding Procedures Order, the Debtor filed the *Notice of Auction and Sale Hearing* [Docket No. 104] which notified parties of the hearing to approve the Sale, which was scheduled for February 21, 2023 at 2:00 p.m. (ET) (the “Sale Hearing”).

**PLEASE TAKE FURTHER NOTICE** that on February 3, 2023, the Debtor filed the *Notice of Filing of Proposed Sale Order* [Docket No. 125] (the “Proposed Sale Order”).

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<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bid Procedures Order or the Bidding Procedures, as applicable.



**PLEASE TAKE FURTHER NOTICE** that the Debtor has made certain revisions to the Proposed Sale Order to incorporate the terms of the proposed asset purchase agreement, as reflected in the revised order attached hereto as **Exhibit A** (the “**Proposed Equipment Sale Order**”). For convenience of the Court and interested parties, a blackline comparing the Proposed Equipment Sale Order to the Proposed Sale Order is attached hereto as **Exhibit B**.

**PLEASE TAKE FURTHER NOTICE** that the Debtor intends to present the Proposed Equipment Sale Order at the Sale Hearing. The Debtor reserves all rights to modify the Proposed Equipment Sale Order at or prior to the Sale Hearing.

Dated: February 20, 2023  
Wilmington, Delaware

*/s/ Allison S. Mielke*

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**EXHIBIT A**

**Proposed Equipment Sale Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

**Re: Docket Nos. 11 & 100**

**ORDER (I) AUTHORIZING AND APPROVING WITH RESPECT TO THE EQUIPMENT ASSETS (A) THE DEBTOR'S ENTRY INTO THE PURCHASE AGREEMENT AND (B) SELECTION OF A NEXT-HIGHEST BID; (II) AUTHORIZING THE SALE OF THE EQUIPMENT ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL CLAIMS; AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated January 11, 2022 [Docket No. 11] (the "Motion") of Tricida, Inc. (the "Debtor"), as debtor and debtor in possession in the above-captioned case (the "Chapter 11 Case"), pursuant to sections 105, 363 and 365 of title 11 of chapter 11 of the United States Code, §§ 101–1532 (the "Bankruptcy Code"), Rules 2002, 6003, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking entry of, among other things, (i) an order (the "Bidding Procedures Order")<sup>2</sup> (a) approving the bidding procedures (the "Bidding Procedures") in connection with the sale or sales (the "Sale") of all or substantially all of the Debtor's assets, or any portion thereof (including the Equipment Assets), (b) authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and approving the Bid Protections in accordance with the Bidding Procedures, (c) scheduling an auction (the "Auction") and sale

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<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor's federal tax identification number, is Tricida, Inc. (2526). The Debtor's service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Bidding Procedures approved in the Bidding Procedures Order entered at Docket No. 100.

hearing (the “Sale Hearing”) and approving the form and manner of notice thereof, and (d) establishing certain assumption and assignment procedures and approving the manner of notice thereof, and (ii) an order (a) authorizing and approving the Debtor’s entry into an asset purchase agreement with the Successful Bidder(s) or Next-Highest Bidder(s), (b) authorizing the Sale of the Assets to the party or parties that are the Successful Bidder(s) or Next-Highest Bidder(s) at the Auction, free and clear of all claims and encumbrances, except for certain assumed liabilities, (c) authorizing and approving the assumption and assignment of certain executory contracts in connection with the Sale, including proposed cure amounts (if any), and (d) granting related relief; and the Debtor having conducted an Auction of its equipment assets (the “Equipment Assets”) on February 15, 2023, in accordance with the Bidding Procedures; and the Debtor having executed that certain Asset Purchase Agreement for the Equipment Assets by and among the Debtor and Liquidity Services Operations LLC (the “Purchaser”) (as may be amended or modified from time to time in accordance with the terms thereof and this Order, the “Purchase Agreement”); and the Debtor having selected the bid submitted at the Auction by Heritage Global Partners (the “Backup Purchaser”) in the amount of \$225,000 as the Next-Highest Bid; and the Court having considered the Purchase Agreement attached hereto as **Exhibit 1**, for the sale of the Equipment Assets free and clear of any Encumbrances, other than Permitted Encumbrances (the “Sale Transaction”); and the Court having entered the Bidding Procedures Order on January 26, 2023 [Docket No. 100]; and the Debtor having selected the Purchaser as the Successful Bidder and the Backup Purchaser as the Next-Highest Bidder; and the Sale Hearing having been held on February 21, 2023; and the Court having reviewed and considered the relief sought in the Motion, the Purchase Agreement, all objections to the Motion, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and all parties in interest having been heard or having had the

opportunity to be heard regarding the Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances of the Chapter 11 Case and in accordance with the Bidding Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion, the First Day Declaration, the *Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. 13] and the *Supplemental Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. [●]] (together, the “Rohan Declarations”), and at the Sale Hearing, establish just cause for the relief granted herein; and after due deliberation thereon,

**THE COURT HEREBY FINDS AND DETERMINES THAT:<sup>3</sup>**

A. **Jurisdiction and Venue.** This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and proceeding is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief requested in the Motion are sections 105, 363 and 365 of the Bankruptcy Code. Such relief is also warranted

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<sup>3</sup> The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. All findings of fact and conclusions of law announced by the Court at the Sale Hearing are hereby incorporated herein to the extent not inconsistent herewith.

pursuant to Bankruptcy Rules 2002, 6003, 6004, 6006, and 9006 and Local Rules 2002-1 and 6004-1.

C. **Final Order.** This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. **Notice.** On January 11, 2023 (the "Petition Date"), the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

E. On January 23, 2023, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the official committee of unsecured creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code [Docket No. 90].

F. The Debtor gave due and proper notice of the proposed Sale, Auction, and Sale Hearing on January 27, 2023 [Docket No. 104] (the "Sale Notice"). The Sale Notice constituted good, sufficient, and appropriate notice of the Sale under the particular circumstances and no further notice need be given with respect to the proposed Sale. As provided by the Sale Notice, a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities. Other parties interested in bidding on the Equipment Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment on whether to bid.

G. As evidenced by the affidavits of service [Docket Nos. 39, 102, 108, 141, 163, 164] previously filed with this Court, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate and sufficient notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order and the Sale Transaction has

been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 9006, 9007, and 9014, and Local Rules 2002-1 and 6004-1. The Debtor has complied with all obligations to provide notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order, and the Sale Transaction as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order or the Sale Transaction is or shall be required.

H. A reasonable opportunity to object or be heard regarding the relief requested in the Motion and provided in this Order was afforded to all parties in interest.

I. **Compliance with the Bidding Procedures Order.** As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel at the Sale Hearing, the Debtor has complied in all material respects with the Bidding Procedures Order. The Debtor and its professionals have adequately and appropriately marketed the Equipment Assets in compliance with the Bidding Procedures and the Bidding Procedures Order, and in accordance with the Debtor's fiduciary duties. Based upon the record of these proceedings, creditors, other parties in interest, and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Equipment Assets.

J. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Equipment Assets. The Debtor conducted the sale process without collusion and in accordance with the Bidding Procedures.

K. The Bidding Procedures Order is incorporated herein by reference.

L. The Purchaser is the designated Successful Bidder, and the Purchase Agreement is designated the Successful Bid for the Equipment Assets enumerated therein in accordance with the Bidding Procedures Order. The Purchaser has complied in all respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and entering into the Purchase Agreement, and the Sale Transaction and the Purchase Agreement likewise comply with the Bidding Procedures Order and all other applicable orders of this Court.

M. The Backup Purchaser is designated the Next-Highest Bidder, and the bid submitted by the Next-Highest Bidder at the Auction in the amount of \$225,000 is designated the Next-Highest Bid for the Equipment Assets. The Backup Purchaser has complied in all material respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and submitting the Next-Highest Bid. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

N. **Business Judgment.** The Purchase Agreement, including the form and total consideration to be realized by the Debtor under the Purchase Agreement, (a) constitutes the highest or otherwise best offer received by the Debtor for the Equipment Assets; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

O. The Debtor's determination that the consideration provided by the Purchaser under the Purchase Agreement constitutes the highest or otherwise best offer for the Equipment Assets is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

P. The Next-Highest Bid submitted by the Backup Purchaser, including the form and total consideration to be realized by the Debtor, (a) constitutes the next highest or best offer received by the Debtor for the Equipment Assets after the Purchase Agreement; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

Q. The Debtor's determination that the consideration provided by the Backup Purchaser pursuant to the Next-Highest Bid constitutes the next highest or otherwise best offer for the Equipment Assets after the Purchase Agreement is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

R. Consistent with its fiduciary duties, the Debtor has demonstrated good, sufficient and sound business reasons and justifications for entering into the Sale Transaction and the performance of its obligations under the Purchase Agreement, including, but not limited to, the fact that (a) the consideration provided by the Purchaser under the Purchase Agreement will provide a greater recovery for the Debtor's estates than would be provided by any other available alternative, including a separate liquidation of the Equipment Assets; and (b) unless the Sale Transaction is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, creditor recoveries will be diminished.

S. **Corporate Authority.** Subject to entry of this Order, the Debtor (a) has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, (b) has all of the necessary corporate power and authority to consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, (c) has taken all corporate action necessary to authorize and approve the Purchase Agreement and the consummation by the Debtor of the transactions

contemplated thereby, including, without limitation, the Sale Transaction, and (d) subject to entry of this Order, need no consents or approvals, including any consents or approvals from any non-Debtor entities, other than those expressly set forth in the Purchase Agreement or this Order, to consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction.

T. **Good Faith.** The sale process engaged in by the Debtor, the Purchaser, and the Backup Purchaser including, without limitation, the Auction, which was conducted in accordance with the Bidding Procedures and the Bidding Procedures Order, and the negotiation of the Purchase Agreement and the Next-Highest Bid, was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties in interest. Neither the Debtor, the Purchaser, nor the Backup Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the Sale Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

U. The Debtor, the Purchaser, and the Backup Purchaser have complied, in good faith, in all respects with the Bidding Procedures Order and the Bidding Procedures. The Debtor, and its management, board of directors, employees, agents, advisors, and representatives, and the Purchaser and Backup Purchaser and their respective employees, agents, advisors and representatives, each actively participated in the bidding process and in the Auction, and each acted in good faith and without collusion or fraud of any kind. The Purchaser and Backup Purchaser subjected their bids to competitive bidding in accordance with the Bidding Procedures and were designated the Successful Bidder and the Next-Highest Bidder, respectively, for the Equipment Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

V. The Purchaser and the Backup Purchaser are each a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and are therefore entitled to the full protection of that provision in respect of the Sale Transaction, each term of the Purchase Agreement and the Next-Highest Bid (and any ancillary documents executed in connection therewith) and each term of this Order, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtor nor the Purchaser or the Backup Purchaser has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code. The Debtor was free to deal with any other party interested in buying or selling some or all of the Equipment Assets on behalf of the Debtor's estate. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Purchaser and the Backup Purchaser would not consummate the Sale Transaction without such protections.

W. The form and total consideration to be realized by the Debtor under the Purchase Agreement or the Next-Highest Bid constitutes fair value, fair, full, and adequate consideration, reasonably equivalent value, and reasonable market value for the Equipment Assets.

X. Neither the Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Purchaser.

Y. Neither the Backup Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity

of directors, managers, controlling shareholders, or members exists between the Debtor and the Backup Purchaser.

Z. **No Fraudulent Transfer.** The consideration provided by the Purchaser or the Backup Purchaser for the Equipment Assets pursuant to the Purchase Agreement or the Next-Highest Bid (a) is fair and reasonable, (b) is the highest and best offer for the Equipment Assets, (c) will provide a greater recovery for the Debtor's creditors and estate than would be provided by any other practical available alternative, and (d) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, and each state, territory, possession, and the District of Columbia.

AA. The Purchase Agreement and the Next-Highest Bid were not entered into, and neither the Debtor nor the Purchaser or the Backup Purchaser has entered into the Purchase Agreement or the Next-Highest Bid or proposes to consummate the Sale Transaction, for the purpose of (a) escaping liability for any of the Debtor's debts or (b) hindering, delaying or defrauding the Debtor's present or future creditors, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

BB. **Free and Clear.** The transfer of the Equipment Assets to the Purchaser or the Backup Purchaser will be a legal, valid, and effective transfer of the Equipment Assets, and will vest the Purchaser or the Backup Purchaser with all right, title, and interest of the Debtor to the Equipment Assets free and clear of all claims (including, without limitation, any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), liens (including, without limitation, any statutory lien on real and personal property and any and all

“liens” as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof), liabilities, interests, rights, and Encumbrances relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, sublicenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, senior or subordinated, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor or

transferee liability or related theories (all of the foregoing, but excluding Assumed Liabilities and Permitted Encumbrances, collectively being referred to in this Order as “Claims”).

CC. Those holders of Claims who did not object or who withdrew their objections to the Motion, are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

DD. The Debtor, to the extent permitted by applicable law, may transfer the Equipment Assets free and clear of all Claims, including, without limitation, rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

EE. The Debtor has, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code.

FF. The Purchaser and the Backup Purchaser would not have entered into the Purchase Agreement and the Next-Highest Bid, respectively and would not consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction, (a) if the transfer of the Equipment Assets were not free and clear of all Claims, or (b) if the Purchaser or the Backup Purchaser would, or in the future could, be liable for or subject to any such Claims.

GG. The Purchaser will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, unless this Court expressly orders that none of the Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

HH. The Backup Purchaser will not consummate the transactions contemplated by the Next-Highest Bid, including, without limitation, the Sale Transaction, unless this Court expressly orders that none of the Backup Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

II. Not transferring the Equipment Assets free and clear of all Claims would adversely impact the Debtor's efforts to maximize the value of its estate, and the transfer of the Equipment Assets other than pursuant to a transfer that is free and clear of all Claims would be of substantially less benefit to the Debtor's estate.

JJ. Neither the Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Purchaser, the Debtor, or any of their respective affiliates. Neither the Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction amounts to a consolidation, merger, or *de facto* merger of the Purchaser or any of its affiliates with or into the Debtor.

KK. Neither the Backup Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Backup Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Backup Purchaser, the Debtor, or any of their respective affiliates. Neither the Backup Purchaser

nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Backup Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Next-Highest Bid, including, without limitation, the Sale Transaction amounts to a consolidation, merger, or *de facto* merger of the Backup Purchaser or any of its affiliates with or into the Debtor.

LL. Without limiting the generality of the foregoing, and other than as may be set forth in the Purchase Agreement, none of the Purchaser, its affiliates, the present or contemplated members or shareholders of the Purchaser, and its affiliates, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims relating to any U.S. federal, state or local income tax liabilities, that the Debtor may incur in connection with consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, or that the Debtor has otherwise incurred prior to the consummation of the transactions contemplated by the Purchase Agreement.

MM. **Validity of Transfer.** The consummation of the transactions contemplated by the Purchase Agreement or the Next-Highest Bid, including, without limitation, the Sale Transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) thereof, and all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the Purchase Agreement or the Next-Highest Bid.

NN. The Equipment Assets constitute property of the Debtor's estate and good title to the Equipment Assets is vested in the Debtor's estate within the meaning under section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the Equipment Assets.

OO. The Purchase Agreement has been duly and validly executed and delivered by the Debtor and, subject to the terms of the Purchase Agreement, shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms. The Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtor and any chapter 7 or chapter 11 trustee appointed in this Chapter 11 Case, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

PP. **Compelling Circumstances for an Immediate Sale.** To maximize the value of the Equipment Assets, it is essential that the transactions contemplated by the Purchase Agreement occur within the time constraints set forth therein. Time is of the essence in consummating the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

RR. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the Purchase Agreement or the Next-Highest Bid, including, without limitation, the Sale Transaction prior to, and outside of, a chapter 11 plan because, among other things, the Debtor's estates will suffer irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The transactions contemplated by the Purchase Agreement or the Next-Highest Bid neither impermissibly restructure the rights of the Debtor's creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtor, and therefore, do not constitute a *sub rosa* plan.

SS. The legal and factual bases set forth in the Motion, the Rohan Declarations filed in support thereof, and presented at the Sale Hearing establish just cause for the relief granted herein.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the Purchase Agreement attached hereto as **Exhibit 1** and the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction, is authorized and approved.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such objections and responses, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief granted herein, including for purposes of sections 363(f)(2), 365(c)(1), and 365(e)(2) of the Bankruptcy Code.

**A. Approval of the Purchase Agreement**

3. The Purchase Agreement, all ancillary documents, the transactions contemplated thereby, including, without limitation, the Sale Transaction, and all the terms and conditions thereof, are approved. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision; the Court hereby authorizes and approves the Purchase Agreement in its entirety.

4. The Debtor and its respective officers, employees and agents are authorized and directed to take any and all actions necessary, appropriate or reasonably requested by the Purchaser to perform, consummate, implement and close the Sale Transaction, including, without limitation, (a) the sale to the Purchaser of all Equipment Assets, in accordance with the terms and conditions set forth in the Purchase Agreement and this Order; and (b) execution, acknowledgment and

delivery of such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and any action for purposes of assigning, transferring, granting, conveying and confirming to the Purchaser, or reducing to possession, the Equipment Assets, all without further order of this Court. The Debtor is further authorized to pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required to be paid by the Debtor under the Purchase Agreement, this Order, or the Bidding Procedures Order, in order to consummate the Sale Transaction or perform their obligations under the Purchase Agreement.

5. All persons and entities, including, without limitation, the Debtor, the Debtor's estate, any and all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trustees, trade creditors, and any other creditors (or agent of any of the foregoing) who may or do hold Claims against the Debtor or the Equipment Assets, arising under or out of, in connection with, or in any way relating to, the Debtor, the Equipment Assets, the operation or ownership of the Equipment Assets by the Debtor prior to the Closing Date, or the Sale Transaction, are hereby prohibited, forever barred, estopped, and permanently enjoined from asserting or pursuing such Claims against the Purchaser, its affiliates, successors, assigns, or property, or the Equipment Assets, including, without limitation, taking any of the following actions with respect to any Claims: (a) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Purchaser, its affiliates, successors, assigns, assets (including the Equipment Assets), and/or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its affiliates, successors, assigns, assets (including the Equipment Assets), and/or properties; (c) creating, perfecting, or enforcing any Claim against the Purchaser, its affiliates, any

of their respective successors, assigns, assets (including the Equipment Assets), and/or properties; (d) asserting a Claim as a setoff, right of subrogation, or recoupment of any kind against any obligation due against the Purchaser, its affiliates or any of their respective successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order, the Purchase Agreement, or the agreements or actions contemplated or taken in respect thereof, including the Debtor's ability to transfer the Equipment Assets to the Purchaser in accordance with the terms of this Order and the Purchase Agreement. No such Person shall assert or pursue any such Claim against the Purchaser or its affiliates, successors or assigns.

6. The sale of the Equipment Assets to the Purchaser under the Purchase Agreement constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and laws of all applicable jurisdictions, including, without limitation, the laws of each jurisdiction in which the Equipment Assets are located, and the sale of the Equipment Assets to the Purchaser may not be avoided under any statutory or common law fraudulent conveyance and fraudulent transfer theories whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

**B. Approval of the Debtor's Selection of the Next-Highest Bid**

7. The Court approves the Debtor's selection of the Next-Highest Bid announced at the Auction in the amount of \$225,000. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work

with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

**C. Transfer of the Equipment Assets Free and Clear**

8. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Equipment Assets shall be sold free and clear of all Claims, with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtor with the same validity, force, priority and effect which they now have as against the Equipment Assets, subject to any claims and defenses the Debtor may possess with respect thereto; *provided, however*, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Sale Transaction.

9. At Closing, all of the Debtor's right, title and interest in and to, and possession of, the Equipment Assets shall be immediately vested in the Purchaser pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code free and clear of any and all Claims. Such transfer shall constitute a legal, valid, binding and effective transfer of, and shall vest the Purchaser with good and marketable title to, the Equipment Assets. All person or entities, presently or on or after the Closing Date, in possession of some or all of the Equipment Assets are authorized to surrender possession of the Equipment Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

10. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby authorized to

accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction.

11. Except as otherwise expressly provided in the Purchase Agreement or this Order, all persons and entities (and their respective successors and assigns), including, but not limited to, any and all debt security holders, equity security holders, affiliates, foreign, federal, state and local governmental, tax and regulatory authorities, lenders, customers, vendors, employees, former employees, trade creditors, litigation claimants and other creditors holding Claims against the Debtor or the Equipment Assets arising under or out of, in connection with, or in any way relating to, the Debtor, the Debtor's predecessors or affiliates, the Equipment Assets, the ownership, sale or operation of the Equipment Assets prior to Closing or the transfer of the Equipment Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting or prosecuting any cause of action or any process or other act or seeking to collect, offset, or recover on account of any Claims against the Purchaser, its successors or assigns, their property or the Equipment Assets. Following the Closing, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Equipment Assets based on or related to any such Claim, or based on any action or omission of the Debtor, including any action or omission the Debtor may take in the Chapter 11 Case.

12. The Debtor is authorized and directed to execute such documents as may be necessary to release any Claims of any kind against the Equipment Assets as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, *lis pendens* or other documents or agreements evidencing Claims against or in the Equipment Assets shall not have delivered to the Debtor prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination

statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Equipment Assets, (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Equipment Assets; (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all such Claims against the Purchaser and the applicable Equipment Assets; (c) the Debtor's creditors and the holders of any Claims are authorized to execute such documents and take all other actions as may be necessary to terminate, discharge or release their Claims in the Equipment Assets and (d) the Purchaser may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction and releases of all such Claims with respect to the Equipment Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office, and such agencies, departments and offices are authorized to accept this Order for filing or recording. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Equipment Assets free and clear of Claims shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

13. To the maximum extent permitted under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Equipment Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed

to have been, and hereby are, authorized to be transferred to the Purchaser with respect to the Equipment Assets as of the Closing Date. To the extent the Purchaser cannot operate under any such license, permit, registration and governmental authorization or approval in accordance with the previous sentence, then to the maximum extent permitted under applicable law, such licenses, permits, registrations and governmental authorizations and approvals shall be in effect while the Purchaser, with assistance from the Debtor (and at the Purchaser's sole cost and expense), works promptly and diligently to apply for and secure all necessary government approvals for new issuance of such licenses, permits, registrations and governmental authorizations and approvals to the Purchaser.

14. No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Equipment Assets on account of the filing or pendency of the Chapter 11 Case or the consummation of the Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate section 525 of the Bankruptcy Code.

**D. No Successor or Transferee Liability**

15. Upon the Closing Date, except as provided in the Purchase Agreement, the entry of this Order and the approval of the terms of the Purchase Agreement shall mean that the Purchaser (and any of its affiliates, successors, or assigns), as a result of any action taken in connection with the Purchase Agreement, the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction, or the transfer or operation of the Equipment Assets, shall not be deemed to: (a) be a legal successor or successor employer to the Debtor (including with respect to any health or benefit plans), or otherwise be deemed a successor to the Debtor, and shall instead be, and be deemed to be, a new employer with respect to all federal or state unemployment

laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (b) have, *de facto*, or otherwise, merged or consolidated with or into the Debtor; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtor or the enterprise of the Debtor, including, in the case of each of (a)-(c), without limitation, (i) within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq.) (“WARN”), Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq. or (ii) in respect of (1) any environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, (2) any liabilities, penalties, costs, debts or obligations of or required to be paid by the Debtor for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or (3) any products liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine.

16. Without limiting the generality of the foregoing, and except as otherwise provided in the Purchase Agreement and this Order, neither the Purchaser nor any of its affiliates shall have any responsibility for (a) any liability or other obligation of the Debtor related to the Equipment Assets or (b) any Claims against the Debtor or any of their predecessors or affiliates. By virtue of the Purchaser’s purchase of the Equipment Assets, neither the Purchaser nor any of its

affiliates shall have any liability whatsoever with respect to the Debtor's (or its predecessors' or affiliates') respective businesses or operations or any of the Debtor's (or its predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental (including, but not limited to CERCLA), successor or transferee liability, *de facto* merger or substantial continuity, labor and employment (including, but not limited to, WARN) or products liability law, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including any liabilities or non-monetary obligations on account of the Debtor's employment agreements or health or benefit plans, any settlement or injunction or any liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Equipment Assets prior to the Closing (collectively, with the potential claims set forth in paragraph 15, "Successor or Transferee Liability"). The Purchaser would not have acquired the Equipment Assets but for the foregoing protections against Successor or Transferee Liability.

17. None of the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by the Debtor or any of its estate, predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Purchase Agreement and the entry into and consummation of the sale of the Equipment Assets, except as expressly provided in the Purchase Agreement and this Order.

18. Nothing in this Order or the Purchase Agreement shall require the Purchaser or any of its affiliates to (a) continue or maintain in effect, or assume any liability in respect of any

employee, former employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtor is a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

19. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtor that are approved by this Order, including, without limitation, the Purchase Agreement and the Sale Transaction.

**E. Good Faith; Arm's Length Sale**

20. The Purchase Agreement has been negotiated and executed, and the transactions contemplated thereby, including, without limitation, the Sale Transaction, are and have been undertaken, by the Debtor, the Purchaser and its respective representatives at arm's length, without collusion and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction or any term of the Purchase Agreement, and shall not permit the unwinding of the Sale Transaction. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections under section 363(m) of the Bankruptcy Code.

21. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the transactions contemplated thereby, including, without limitation, the Sale Transaction, to be avoided, or for costs, or damages or costs, to be imposed,

under section 363(n) of the Bankruptcy Code. The consideration provided by the Purchaser for the Equipment Assets under the Purchase Agreement is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

**F. Related Relief**

22. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale Transaction contemplated by the Purchase Agreement.

23. No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the Equipment Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of the Chapter 11 Case or the consummation of the sale of the Equipment Assets.

24. Except as expressly provided in the Purchase Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtor or its estate from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any assets or liabilities not constituting an Equipment Asset.

25. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Equipment Assets are hereby directed to surrender possession of the Equipment Assets to the Purchaser on or prior to the Closing Date or such later date that such party and the Purchaser mutually agree.

26. To the extent this Order is inconsistent with any prior order or pleading filed in the Chapter 11 Case related to the Motion, the terms of this Order shall govern. To the extent there is

any inconsistency between the terms of this Order and the terms of the Purchase Agreement, the terms of this Order shall govern.

27. This Order and the Purchase Agreement shall be binding in all respects upon all pre-petition and post-petition creditors of the Debtor, all interest holders of the Debtor, any Court-appointed committee, all successors and assigns of the Debtor and its affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Chapter 11 Case or upon a conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the Purchase Agreement and Sale Transaction shall not be subject to rejection or avoidance under any circumstances by any party. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Order and the rights granted to the Purchaser hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest. For the avoidance of doubt, the Debtor’s inability to satisfy in full all administrative expense claims of the Debtor’s estate shall not be a basis for termination, rejection or avoidance (as applicable) of the Purchase Agreement or the Sale Transaction.

28. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction, including any and all disputes with any counterparty to any executory contract or unexpired lease of the Debtor and any party that has, or asserts, possession, control or other rights in respect of any of the Equipment Assets; *provided, however*, that, in the event the

Court abstains from exercising or declines to exercise such jurisdiction with respect to the Purchase Agreement, the Bidding Procedures Order, or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Equipment Assets, to protect the Debtor and its assets, including the Equipment Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to sections 105(a) or 363 of the Bankruptcy Code (or other applicable provisions) necessary to transfer the Equipment Assets to the Purchaser.

29. At any time prior to the Closing Date, the Purchaser or the Debtor may terminate the Purchase Agreement pursuant to the terms thereof without any penalty or liability to the Purchaser or the Debtor (or its estate), except as set forth in the Purchase Agreement.

30. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

31. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply; (b) the Debtor is not subject to any stay of this Order or in the implementation, enforcement or realization of the relief

granted in this Order; and (c) the Debtor and the Purchaser may, each in its discretion and without further delay, take any action and perform any act authorized under this Order.

32. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code, to give any notice permitted by the Purchase Agreement or to enforce any of its remedies under the Purchase Agreement or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

33. The provisions of this Order are non-severable and mutually dependent.

34. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

**Exhibit 1**

**Purchase Agreement**

**[To Come]**

**EXHIBIT B**

**Blackline of Proposed Equipment Sale Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Re: Docket Nos. 11 & 100

**ORDER ~~A(I)~~ AUTHORIZING AND APPROVING WITH RESPECT TO THE EQUIPMENT ASSETS (A) THE DEBTOR'S ENTRY INTO THE ~~PURCHASE AGREEMENT [AND BACKUP PURCHASE AGREEMENT];~~ AND (B) SELECTION OF A NEXT-HIGHEST BID; (II) AUTHORIZING THE SALE OF THE ~~ACQUIRED~~ EQUIPMENT ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL CLAIMS, ~~(C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED CONTRACTS;~~ AND ~~(D) III~~ GRANTING RELATED RELIEF**

Upon the motion, dated January 11, 2022 [Docket No. 11] (the “Motion”) of Tricida, Inc. (the “Debtor”), as debtor and debtor in possession in the above-captioned case (the “Chapter 11 Case”), pursuant to sections 105, 363 and 365 of title 11 of chapter 11 of the United States Code, §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of, among other things, (i) an order (the “Bidding Procedures Order”)<sup>2</sup> (a) approving the bidding procedures (the “Bidding

<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Bidding Procedures approved in the Bidding Procedures Order entered at Docket No. 100~~[,] or the Purchase Agreement (as defined below), or the Backup Purchase Agreement], as applicable or as context requires.~~

Procedures”) in connection with the sale or sales (the “Sale”) of all or substantially all of the Debtor’s assets, or any portion thereof (including the ~~Acquired~~Equipment Assets), (b) authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and approving the Bid Protections in accordance with the Bidding Procedures, (c) scheduling an auction (the “Auction”) and sale hearing (the “Sale Hearing”) and approving the form and manner of notice thereof, and (d) establishing certain assumption and assignment procedures and approving the manner of notice thereof, and (ii) an order (a) authorizing and approving the Debtor’s entry into an asset purchase agreement with the Successful Bidder(s) or Next-Highest Bidder(s), (b) authorizing the Sale of the Assets to the party or parties that are the Successful Bidder(s) or Next-Highest Bidder(s) at the Auction, free and clear of all claims and encumbrances, except for certain assumed liabilities, (c) authorizing and approving the assumption and assignment of certain executory contracts in connection with the Sale, including proposed cure amounts (if any), and (d) granting related relief; and the Debtor having conducted an Auction of its equipment assets (the “Equipment Assets”) on February 15, 2023, in accordance with the Bidding Procedures; and the Debtor having executed ~~(a)~~ that certain Asset Purchase Agreement for the Equipment Assets by and among the Debtor and ~~{•}~~Liquidity Services Operations LLC (the “Purchaser”), ~~dated as of February {•}, 2023~~ (as may be amended or modified from time to time in accordance with the terms thereof and this Order, the “Purchase Agreement”) ~~}; and (b) that certain Asset Purchase Agreement by and among the Debtor and {•} having selected the bid submitted at the Auction by Heritage Global Partners~~ (the “Backup Purchaser”), ~~dated as of February {•}, 2023 (as may be amended or modified from time to time in accordance with the terms thereof and this Order, the “Backup~~ in the amount of \$225,000 as the Next-Highest Bid; and the Court having considered the Purchase Agreement”) ~~};~~ attached

hereto as ~~Exhibit 1A and Exhibit 1B, respectively, each contemplating~~1, for the sale of the ~~Acquired~~Equipment Assets ~~identified therein~~ free and clear of any Encumbrances, other than Permitted Encumbrances, ~~the assumption of those contracts of the Debtor identified therein (the “Assumed Contracts”), and assignment of the Assumed Contracts to Purchaser or Backup Purchaser (collectively, the~~ (the “Sale Transaction”); and the Court having entered the Bidding Procedures Order on January 26, 2023 [Docket No. 100]; and the ~~Auction having [been held on February 15, 2023, in accordance with the Bidding Procedures] [been cancelled in accordance with the Bidding Procedures];~~ and the Debtor having selected the Purchaser as the Successful Bidder ~~[and the Backup Purchaser as the Next-Highest Bidder];~~ and the Sale Hearing having been held on February 21, 2023; and the Court having reviewed and considered the relief sought in the Motion, the Purchase Agreement, ~~[the Backup Purchase Agreement],~~ all objections to the Motion, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances of the Chapter 11 Case and in accordance with the Bidding Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion, the First Day Declaration, the *Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. 13] and the ~~[•]~~ *Supplemental Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. [•]]

([together](#), the “Rohan Declarations”), and at the Sale Hearing, establish just cause for the relief granted herein; and after due deliberation thereon,

**THE COURT HEREBY FINDS AND DETERMINES THAT:<sup>3</sup>**

A. **Jurisdiction and Venue.** This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and proceeding is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief requested in the Motion are sections 105, 363 and 365 of the Bankruptcy Code. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6003, 6004, 6006, and 9006 and Local Rules 2002-1 and 6004-1.

C. **Final Order.** This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. **Notice.** On January 11, 2023 (the “Petition Date”), the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

E. On January 23, 2023, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the official committee of unsecured creditors

<sup>3</sup> The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. All findings of fact and conclusions of law announced by the Court at the Sale Hearing are hereby incorporated herein to the extent not inconsistent herewith.

(the “Committee”) pursuant to section 1102 of the Bankruptcy Code [Docket No. 90].

F. The Debtor gave due and proper notice of the proposed Sale, Auction, and Sale Hearing on January 27, 2023 [Docket No. 104] (the “Sale Notice”). The Sale Notice constituted good, sufficient, and appropriate notice of the Sale under the particular circumstances and no further notice need be given with respect to the proposed Sale. As provided by the Sale Notice, a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities. Other parties interested in bidding on the ~~Acquired~~Equipment Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment on whether to bid.

~~G. The Debtor also gave due and proper notice of the potential assumption and assignment of each executory contract or unexpired lease available to be assumed by the Debtor and assigned to the Purchaser to each non-debtor party under each such executory contract or unexpired lease as reflected on the notice of potential assumption and assignment of the Assumed Contracts, filed on January 31, 2023 [Docket No. 113] (the “Assumption and Assignment Notice”). Such notice was good, sufficient, and appropriate under the particular circumstances, and the counterparties to the Assumed Contracts are hereby deemed to consent to the relief granted herein, unless otherwise provided in this Order.~~

G. ~~H.~~ As evidenced by the affidavits of service [Docket Nos. 39, 102, 108, ~~[•]~~141, ~~[•]~~163, 164] previously filed with this Court, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate and sufficient notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the ~~assumption and assignment of the Assumed Contracts,~~ the Purchase Agreement, this Order and the Sale Transaction has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 9006,

9007, and 9014, and Local Rules 2002-1 and 6004-1. The Debtor has complied with all obligations to provide notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the ~~Cure Costs, the assumption and assignment of the Assumed Contracts, the~~ Purchase Agreement, ~~[the Backup Purchase Agreement,]~~ this Order, and the Sale Transaction as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the ~~assumption and assignment of the Assumed Contracts, the~~ Purchase Agreement, this Order or the Sale Transaction is or shall be required.

H. ~~I.~~ A reasonable opportunity to object or be heard regarding the relief requested in the Motion and provided in this Order was afforded to all parties in interest.

I. ~~J.~~ **Compliance with the Bidding Procedures Order.** As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel at the Sale Hearing, the Debtor has complied in all material respects with the Bidding Procedures Order. The Debtor and its professionals have adequately and appropriately marketed the ~~Acquired~~Equipment Assets in compliance with the Bidding Procedures and the Bidding Procedures Order, and in accordance with the Debtor's fiduciary duties. Based upon the record of these proceedings, creditors, other parties in interest, and prospective purchasers were afforded a reasonable and fair opportunity to bid for the ~~Acquired~~Equipment Assets.

J. ~~K.~~ The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the ~~Acquired~~Equipment Assets. The Debtor conducted the sale process without collusion and in accordance with the Bidding Procedures.

K. ~~L.~~ The Bidding Procedures Order is incorporated herein by reference.

L. ~~M.~~ The Purchaser is the designated Successful Bidder, and the Purchase Agreement is designated the Successful Bid for the ~~Acquired~~Equipment Assets enumerated therein in accordance with the Bidding Procedures Order. The Purchaser has complied in all respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and entering into the Purchase Agreement, and the Sale Transaction and the Purchase Agreement likewise comply with the Bidding Procedures Order and all other applicable orders of this Court.

M. ~~N.~~ The Backup Purchaser is designated the Next-Highest Bidder, and the ~~Backup Purchase Agreement~~bid submitted by the Next-Highest Bidder at the Auction in the amount of \$225,000 is designated the Next-Highest Bid for the ~~Acquired~~Equipment Assets ~~enumerated therein~~. The Backup Purchaser has complied in all material respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and ~~entering into the Backup Purchase Agreement, and the Sale Transaction and the Backup Purchase Agreement likewise comply with the Bidding Procedures Order and all other applicable orders of this Court.~~submitting the Next-Highest Bid. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

N. ~~O.~~ **Business Judgment.** The Purchase Agreement, including the form and total consideration to be realized by the Debtor under the Purchase Agreement, (a) constitutes the highest or otherwise best offer received by the Debtor for the ~~Acquired~~Equipment Assets; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all

other parties in interest.

O. ~~P.~~ The Debtor's determination that the consideration provided by the Purchaser under the Purchase Agreement constitutes the highest or otherwise best offer for the ~~Acquired~~Equipment Assets is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

P. ~~Q.~~ ~~The Backup Purchase Agreement~~Next-Highest Bid submitted by the Backup Purchaser, including the form and total consideration to be realized by the Debtor ~~under the Backup Purchase Agreement~~, (a) constitutes the next highest or best offer received by the Debtor for the ~~Acquired~~Equipment Assets after the Purchase Agreement; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

Q. ~~R.~~ The Debtor's determination that the consideration provided by the Backup Purchaser ~~under the Backup Purchase Agreement~~pursuant to the Next-Highest Bid constitutes the next highest or otherwise best offer for the ~~Acquired~~Equipment Assets after the Purchase Agreement is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.}

~~S. The releases provided under the Purchase Agreement [and the Backup Purchase Agreement] are fair and reasonable, are in the best interests of the Debtor, its estate, its creditors and all other parties in interest, and are being provided in return for fair consideration.~~

R. ~~T.~~ Consistent with its fiduciary duties, the Debtor has demonstrated good, sufficient and sound business reasons and justifications for entering into the Sale Transaction and the performance of its obligations under the Purchase Agreement ~~[or the Backup Purchase Agreement]~~, including, but not limited to, the fact that (a) the consideration provided by the Purchaser ~~[or the Backup Purchaser]~~ under the Purchase Agreement ~~[or Backup Purchase~~

~~Agreement~~ will provide a greater recovery for the Debtor's estates than would be provided by any other available alternative, including a separate liquidation of the ~~Acquired~~Equipment Assets; and (b) unless the Sale Transaction is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement ~~[or Backup Purchase Agreement]~~, creditor recoveries will be diminished.

S. ~~U.~~ **Corporate Authority.** Subject to entry of this Order, the Debtor (a) has full corporate power and authority to execute and deliver the Purchase Agreement ~~[and the Backup Purchase Agreement]~~ and all other documents contemplated thereby, (b) has all of the necessary corporate power and authority to consummate the transactions contemplated by the Purchase Agreement ~~[or the Backup Purchase Agreement]~~, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~, (c) has taken all corporate action necessary to authorize and approve the Purchase Agreement ~~[and the Backup Purchase Agreement]~~ and the consummation by the Debtor of the transactions contemplated thereby, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~, and (d) subject to entry of this Order, need no consents or approvals, including any consents or approvals from any ~~non-Debtor~~non-Debtor entities, other than those expressly set forth in the Purchase Agreement ~~[, the Backup Purchase Agreement,]~~ or this Order, to consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~.

T. ~~V.~~ **Good Faith.** The sale process engaged in by the Debtor ~~[and]~~<sub>2</sub> the Purchaser, ~~[and the Backup Purchaser]~~<sub>1</sub> including, without limitation, the Auction, which was conducted in accordance with the Bidding Procedures and the Bidding Procedures Order<sub>1</sub>, and the negotiation of the Purchase Agreement ~~[and the Backup Purchase Agreement]~~Next-Highest Bid, was at

arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties in interest. Neither the Debtor ~~nor~~, the Purchaser ~~or, nor~~ the Backup Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement ~~, the Backup Purchase Agreement,~~ or the Sale Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

U. ~~W.~~ The Debtor ~~, and~~ the Purchaser, and the Backup Purchaser have complied, in good faith, in all respects with the Bidding Procedures Order and the Bidding Procedures. The Debtor, and its management, board of directors, employees, agents, advisors, and representatives, and the Purchaser ~~and the Backup Purchaser~~ and ~~its~~ their respective employees, agents, advisors and representatives, each actively participated in the bidding process ~~and in the Auction,~~ and each acted in good faith and without collusion or fraud of any kind. The Purchaser ~~and the Backup Purchaser~~ subjected ~~its~~ their ~~respective~~ bid[s] bids to competitive bidding in accordance with the Bidding Procedures and ~~was~~ were designated the Successful Bidder ~~and the Next-Highest Bidder, respectively,~~ for the ~~Acquired~~ Equipment Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

V. ~~X.~~ The Purchaser ~~and the Backup Purchaser~~ ~~is~~ are each a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and ~~is~~ are therefore entitled to the full protection of that provision in respect of the Sale Transaction, each term of the Purchase Agreement ~~and the Backup Purchase Agreement~~ Next-Highest Bid (and any ancillary documents executed in connection therewith) and each term of this Order, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtor nor the Purchaser ~~or the Backup Purchaser~~ has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code. The Debtor was free to deal with any

other party interested in buying or selling some or all of the ~~Acquired~~Equipment Assets on behalf of the Debtor's estate. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Purchaser ~~{and the Backup Purchaser}~~ would not consummate the Sale Transaction without such protections.

W. ~~Y.~~ The form and total consideration to be realized by the Debtor under the Purchase Agreement ~~{or the Backup Purchase Agreement}~~Next-Highest Bid constitutes fair value, fair, full, and adequate consideration, reasonably equivalent value, and reasonable market value for the ~~Acquired~~Equipment Assets.

X. ~~Z.~~ Neither the Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Purchaser.~~}~~

Y. ~~AA.~~ Neither the Backup Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Backup Purchaser.~~}~~

Z. ~~BB.~~ **No Fraudulent Transfer.** The consideration provided by the Purchaser ~~{or the Backup Purchaser}~~ for the ~~Acquired~~Equipment Assets pursuant to the Purchase Agreement ~~{or the Backup Purchase Agreement}~~Next-Highest Bid (a) is fair and reasonable, (b) is the highest and best offer for the ~~Acquired~~Equipment Assets, (c) will provide a greater recovery for the Debtor's creditors and estate than would be provided by any other practical available

alternative, and (d) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, and each state, territory, possession, and the District of Columbia.

AA. ~~CC.~~ The Purchase Agreement ~~{and the Backup Purchase Agreement}~~ ~~{was}~~Next-Highest Bid ~~were}~~ not entered into, and neither the Debtor nor the Purchaser ~~{or the Backup Purchaser}~~ has entered into the Purchase Agreement ~~{or the Backup Purchase Agreement}~~Next-Highest Bid or proposes to consummate the Sale Transaction, for the purpose of (a) escaping liability for any of the Debtor's debts or (b) hindering, delaying or defrauding the Debtor's present or future creditors, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

BB. ~~DD.~~ **Free and Clear.** The transfer of the ~~Acquired~~Equipment Assets to the Purchaser ~~{or the Backup Purchaser}~~ will be a legal, valid, and effective transfer of the ~~Acquired~~Equipment Assets, and will vest the Purchaser ~~{or the Backup Purchaser}~~ with all right, title, and interest of the Debtor to the ~~Acquired~~Equipment Assets free and clear of all claims (including, without limitation, any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), liens (including, without limitation, any statutory lien on real and personal property and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof), liabilities, interests, rights, and Encumbrances relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise

of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, sublicenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, senior or subordinated, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor or transferee liability or related theories (all of the foregoing, but excluding Assumed Liabilities and Permitted Encumbrances, collectively being referred to in this Order as “Claims”).

CC. Those holders of Claims who did not object or who withdrew their objections to the Motion, are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2)

of the Bankruptcy Code. Those holders of Claims who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

DD. ~~EE.~~ The Debtor, to the extent permitted by applicable law, may transfer the ~~Acquired~~Equipment Assets free and clear of all Claims, including, without limitation, rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

~~FF. Those (a) holders of Claims and (b) non-Debtor parties to the Assumed Contracts, in each case who did not object or who withdrew their objections to the Motion, are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those (a) holders of Claims, and (b) non-Debtor parties to the Assumed Contracts, in each case who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.~~

EE. ~~GG.~~ The Debtor has, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code.

FF. ~~HH.~~ The Purchaser ~~{and the Backup Purchaser}~~ would not have entered into the Purchase Agreement ~~{and the Backup Purchase Agreement}~~Next-Highest Bid, respectively~~}~~ and would not consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~, (a) if the transfer of the ~~Acquired~~Equipment Assets were not free and clear of all Claims, or (b) if the Purchaser ~~{or the Backup Purchaser}~~ would, or in the future could, be liable for or subject to any such Claims.

GG. ~~H.~~ The Purchaser will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction ~~and the assumption and~~

~~assignment of the Assumed Contracts~~, unless this Court expressly orders that none of the Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the ~~Acquired~~Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

HH. ~~JJ.~~ The Backup Purchaser will not consummate the transactions contemplated by the ~~Backup Purchase Agreement~~Next-Highest Bid, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~, unless this Court expressly orders that none of the Backup Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the ~~Acquired~~Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.‡

II. ~~KK.~~ Not transferring the ~~Acquired~~Equipment Assets free and clear of all Claims would adversely impact the Debtor's efforts to maximize the value of its estate, and the transfer of the ~~Acquired~~Equipment Assets other than pursuant to a transfer that is free and clear of all Claims would be of substantially less benefit to the Debtor's estate.

JJ. ~~LL.~~ Neither the Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Purchaser, the Debtor, or any of their respective affiliates. Neither the Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale

Transaction ~~and the assumption and assignment of the Assumed Contracts~~ amounts to a consolidation, merger, or *de facto* merger of the Purchaser or any of its affiliates with or into the Debtor.

KK. ~~MM.~~ [Neither the Backup Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Backup Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Backup Purchaser, the Debtor, or any of their respective affiliates. Neither the Backup Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Backup Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the ~~Backup Purchase Agreement~~Next-Highest Bid, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~ amounts to a consolidation, merger, or *de facto* merger of the Backup Purchaser or any of its affiliates with or into the Debtor.]

LL. ~~NN.~~ Without limiting the generality of the foregoing, and other than as may be set forth in the Purchase Agreement ~~[or the Backup Purchase Agreement]~~, none of the Purchaser, ~~[the Backup Purchaser,]~~ ~~[its][their respective]~~ its affiliates, the present or contemplated members or shareholders of the Purchaser, ~~[the Backup Purchaser,]~~ and ~~[its][their respective]~~ affiliates, or the ~~Acquired~~Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims relating to any U.S. federal, state or local income tax liabilities, that the Debtor may incur in connection with consummation of the transactions contemplated by the Purchase Agreement ~~[or the Backup Purchase Agreement]~~, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~, or that the

Debtor has otherwise incurred prior to the consummation of the transactions contemplated by the Purchase Agreement ~~for the Backup Purchase Agreement~~.

MM. ~~OO.~~ **Validity of Transfer.** The consummation of the transactions contemplated by the Purchase Agreement ~~or the Backup Purchase Agreement~~ Next-Highest Bid, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~ is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) thereof, and all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the Purchase Agreement ~~for the Backup Purchase Agreement~~ Next-Highest Bid.

NN. ~~PP.~~ The ~~Acquired~~ Equipment Assets constitute property of the Debtor's estate and good title to the ~~Acquired~~ Equipment Assets is vested in the Debtor's estate within the meaning under section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the ~~Acquired~~ Equipment Assets.

OO. ~~QQ.~~ The Purchase Agreement ~~and the Backup Purchase Agreement~~ ~~has~~ ~~have~~ has been duly and validly executed and delivered by the Debtor and, subject to the terms of the Purchase Agreement ~~and the Backup Purchase Agreement, respectively~~, shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with ~~its~~ ~~their~~ terms. The Purchase Agreement, ~~the Backup Purchase Agreement,~~ the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtor and any chapter 7 or chapter 11 trustee appointed in this Chapter 11 Case, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

**Assumed Contracts**

~~RR. The assumption and assignment of the Assumed Contracts pursuant to the Assumption and Assignment Notice, the terms of this Order, and the Purchase Agreement[ or the Backup Purchase Agreement] is integral to the transactions contemplated by the Purchase Agreement[ or the Backup Purchase Agreement]. Such assumption and assignment is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest, and represents a reasonable exercise of the Debtor's sound and prudent business judgment.~~

~~SS. Pursuant to the terms of the Purchase Agreement[ or the Backup Purchase Agreement] and this Order, on or before the Closing Date, as applicable pursuant to the terms of this Order, the Debtor or the Purchaser [or the Backup Purchaser], as applicable, shall have, except as otherwise provided in the Purchase Agreement[, the Backup Purchase Agreement,] or this Order, or as otherwise expressly agreed to between the Debtor[,] [or ]the Purchaser,[ or the Backup Purchaser,] as applicable, and such counterparty: (a) cured, or provided adequate assurance of cure of, any monetary default existing as of and including the Closing Date under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, (b) provided compensation, or adequate assurance of compensation, to any party for actual pecuniary loss to such party resulting from a monetary default existing as of and including the Closing Date under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and (c) provided adequate assurance of future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.~~

PP. ~~TT.~~ **Compelling Circumstances for an Immediate Sale.** To maximize the value of the Acquired Equipment Assets, it is essential that the transactions contemplated by the

Purchase Agreement ~~[or the Backup Purchase Agreement]~~ occur within the time constraints set forth therein. Time is of the essence in consummating the transactions contemplated by the Purchase Agreement~~[or the Backup Purchase Agreement]~~, including, without limitation, the Sale Transaction~~and the assumption and assignment of the Assumed Contracts~~. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

RR. ~~VV.~~—The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the Purchase Agreement~~[or the Backup Purchase Agreement]~~Next-Highest Bid, including, without limitation, the Sale Transaction ~~and the assumption and assignment of the Assumed Contracts~~ prior to, and outside of, a chapter 11 plan because, among other things, the Debtor's estates will suffer irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The transactions contemplated by the Purchase Agreement~~[or the Backup Purchase Agreement]~~Next-Highest Bid neither impermissibly restructure the rights of the Debtor's creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtor, and therefore, do not constitute a *sub rosa* plan.

SS. ~~WW.~~—The legal and factual bases set forth in the Motion~~and~~, the Rohan Declarations filed in support thereof, and presented at the Sale Hearing establish just cause for the relief granted herein.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the Purchase Agreement attached hereto as Exhibit 1A~~[or the Backup Purchase Agreement attached hereto as Exhibit 1B]~~1 and the consummation of the transactions

contemplated thereby, including, without limitation, the Sale Transaction, ~~the releases, and the assumption and assignment of the Assumed Contracts~~ is authorized and approved.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such objections and responses, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief granted herein, including for purposes of sections 363(f)(2), 365(c)(1), and 365(e)(2) of the Bankruptcy Code.

**A. Approval of the Purchase Agreement ~~and Backup Purchase Agreement~~**

3. The Purchase Agreement, ~~[the Backup Purchase Agreement]~~ all ancillary documents, the transactions contemplated thereby, including, without limitation, the Sale Transaction, ~~the releases, and the assumption and assignment of the Assumed Contracts~~, and all the terms and conditions thereof, are approved. The failure specifically to include any particular provision of the Purchase Agreement ~~[or the Backup Purchase Agreement]~~ in this Order shall not diminish or impair the effectiveness of such provision; the Court hereby authorizes and approves the Purchase Agreement ~~[and the Backup Purchase Agreement]~~ in ~~[its][their]~~ entirety.

4. The Debtor and its respective officers, employees and agents are authorized and directed to take any and all actions necessary, appropriate or reasonably requested by the Purchaser ~~[or the Backup Purchaser, as applicable]~~ to perform, consummate, implement and close the Sale Transaction, including, without limitation, (a) the sale to the Purchaser ~~[or the Backup Purchaser]~~ of all ~~Acquired~~ Equipment Assets, in accordance with the terms and conditions set forth in the Purchase Agreement ~~[or the Backup Purchase Agreement, as applicable]~~ and this Order; and (b) execution, acknowledgment and delivery of such deeds,

assignments, conveyances and other assurance, documents and instruments of transfer and any action for purposes of assigning, transferring, granting, conveying and confirming to the Purchaser~~[or the Backup Purchaser]~~, or reducing to possession, the ~~Acquired~~Equipment Assets, all without further order of this Court. The Debtor is further authorized to pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required to be paid by the Debtor under the Purchase Agreement,~~[the Backup Purchase Agreement]~~, this Order, or the Bidding Procedures Order, in order to consummate the Sale Transaction or perform their obligations under the Purchase Agreement~~[or the Backup Purchase Agreement]~~.

5. All persons and entities, including, without limitation, the Debtor, the Debtor's estate, any and all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trustees, trade creditors, and any other creditors (or agent of any of the foregoing) who may or do hold Claims against the Debtor or the ~~Acquired~~Equipment Assets, arising under or out of, in connection with, or in any way relating to, the Debtor, the ~~Acquired~~Equipment Assets, the operation or ownership of the ~~Acquired~~Equipment Assets by the Debtor prior to the Closing Date, or the Sale Transaction, are hereby prohibited, forever barred, estopped, and permanently enjoined from asserting or pursuing such Claims against the Purchaser~~[or the Backup Purchaser]~~, ~~[its][their respective]~~, its affiliates, successors, assigns, or property, or the ~~Acquired~~Equipment Assets, including, without limitation, taking any of the following actions with respect to any Claims: (a) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Purchaser, its affiliates, successors, assigns, assets (including the ~~Acquired~~Equipment Assets),

and/or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its affiliates, successors, assigns, assets (including the Acquired Equipment Assets), and/or properties; (c) creating, perfecting, or enforcing any Claim against ~~[(i)]~~ the Purchaser, its affiliates, any of their respective successors, assigns, assets (including the Acquired Equipment Assets), and/or properties ~~[or (ii) the Backup Purchaser, its affiliates, any of their respective successors, assigns, assets (including the Acquired Assets), and/or properties]~~; (d) asserting a Claim as a setoff, right of subrogation, or recoupment of any kind against any obligation due against ~~[(i)]~~ the Purchaser, its affiliates or any of their respective successors or assigns ~~or [(ii) the Backup Purchaser, its affiliates or any of their respective successors or assigns]~~; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order, the Purchase Agreement, ~~the Backup Purchase Agreement,~~ or the agreements or actions contemplated or taken in respect thereof, including the Debtor's ability to transfer the Acquired Equipment Assets to the Purchaser ~~or the Backup Purchaser~~ in accordance with the terms of this Order and the Purchase Agreement ~~or the Backup Purchase Agreement~~. No such Person shall assert or pursue any such Claim against ~~[(i)]~~ the Purchaser or its affiliates, successors or assigns ~~or (ii) the Backup Purchaser or its affiliates, successors or assigns~~.

6. The sale of the Acquired Equipment Assets to the Purchaser under the Purchase Agreement ~~or the Backup Purchaser under the Backup Purchase Agreement~~ constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and laws of all applicable jurisdictions, including, without limitation, the laws of each jurisdiction in which the Acquired Equipment Assets are located, and the sale of the Acquired Equipment Assets to the Purchaser ~~or the Backup Purchaser~~ may not be avoided under any statutory or common

law fraudulent conveyance and fraudulent transfer theories whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

**B. Approval of the Debtor's Selection of the Next-Highest Bid**

7. The Court approves the Debtor's selection of the Next-Highest Bid announced at the Auction in the amount of \$225,000. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

**C. ~~B.~~ Transfer of the Acquired Equipment Assets Free and Clear**

8. ~~7.~~ Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the ~~Acquired Equipment~~ Assets shall be sold free and clear of all Claims, with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtor with the same validity, force, priority and effect which they now have as against the ~~Acquired Equipment~~ Assets, subject to any claims and defenses the Debtor may possess with respect thereto; *provided, however,* that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Sale Transaction.

9. ~~8.~~ At Closing, all of the Debtor's right, title and interest in and to, and possession of, the ~~Acquired Equipment~~ Assets shall be immediately vested in the Purchaser~~[or the Backup Purchaser]~~ pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code free and clear of any and all Claims. Such transfer shall constitute a legal, valid, binding and effective transfer of, and shall vest the Purchaser~~[or the Backup Purchaser]~~ with good and marketable title to, the ~~Acquired Equipment~~ Assets. All person or entities, presently or on or after the Closing Date, in

possession of some or all of the ~~Acquired~~Equipment Assets are authorized to surrender possession of the ~~Acquired~~Equipment Assets to the Purchaser~~[or the Backup Purchaser, as applicable]~~ on the Closing Date or at such time thereafter as the Purchaser~~[or Backup Purchaser, as applicable]~~ may request.

10. ~~9.~~ This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction.

11. ~~10.~~ Except as otherwise expressly provided in the Purchase Agreement~~[, the Backup Purchase Agreement,]~~ or this Order, all persons and entities (and their respective successors and assigns), including, but not limited to, any and all debt security holders, equity security holders, affiliates, foreign, federal, state and local governmental, tax and regulatory authorities, lenders, customers, vendors, employees, former employees, trade creditors, litigation claimants and other creditors holding Claims against the Debtor or the ~~Acquired~~Equipment Assets arising under or out of, in connection with, or in any way relating to, the Debtor, the Debtor's predecessors or affiliates, the ~~Acquired~~Equipment Assets, the ownership, sale or operation of the ~~Acquired~~Equipment Assets prior to Closing or the transfer of the ~~Acquired~~Equipment Assets to the Purchaser~~[or the Backup Purchaser]~~, are hereby forever

barred, estopped and permanently enjoined from asserting or prosecuting any cause of action or any process or other act or seeking to collect, offset, or recover on account of any Claims against ~~[(a)]~~ the Purchaser, its successors or assigns, their property ~~[(ii) the Backup Purchaser, its successors or assigns, their property,]~~ or the Acquired Equipment Assets. Following the Closing, no holder of any Claim shall interfere with the Purchaser's ~~{or the Backup Purchaser's}~~ title to or use and enjoyment of the Acquired Equipment Assets based on or related to any such Claim, or based on any action or omission of the Debtor, including any action or omission the Debtor may take in the Chapter 11 Case.

12. ~~11.~~ The Debtor is authorized and directed to execute such documents as may be necessary to release any Claims of any kind against the Acquired Equipment Assets as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, *lis pendens* or other documents or agreements evidencing Claims against or in the Acquired Equipment Assets shall not have delivered to the Debtor prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Acquired Equipment Assets, (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Equipment Assets; (b) the Purchaser ~~{or the Backup Purchaser, as applicable}~~ is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all such Claims against the Purchaser ~~{or the Backup Purchaser}~~ and the applicable Acquired Equipment Assets; (c) the Debtor's creditors and the holders of any Claims are authorized to execute such documents and take all other actions as

may be necessary to terminate, discharge or release their Claims in the ~~Acquired~~Equipment Assets and (d) the Purchaser~~[or the Backup Purchaser, as applicable,]~~ may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction and releases of all such Claims with respect to the ~~Acquired~~Equipment Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office, and such agencies, departments and offices are authorized to accept this Order for filing or recording. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the ~~Acquired~~Equipment Assets free and clear of Claims shall be self-executing, and neither the Debtor nor the Purchaser~~[or the Backup Purchaser]~~ shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

13. ~~12.~~ To the maximum extent permitted under applicable law, the Purchaser~~[or the Backup Purchaser, as applicable]~~ shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the ~~Acquired~~Equipment Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, authorized to be transferred to the Purchaser~~[or the Backup Purchaser, as applicable]~~ with respect to the ~~Acquired~~Equipment Assets as of the Closing Date. To the extent the Purchaser~~[or the Backup Purchaser]~~ cannot operate under any such license, permit, registration and governmental authorization or approval in accordance with the previous sentence, then to the maximum extent permitted under applicable law, such licenses, permits, registrations and governmental authorizations and approvals shall be in effect while the Purchaser~~[or the Backup Purchaser]~~,

with assistance from the Debtor (and at the Purchaser's~~[or the Backup Purchaser's]~~ sole cost and expense), works promptly and diligently to apply for and secure all necessary government approvals for new issuance of such licenses, permits, registrations and governmental authorizations and approvals to the Purchaser~~[or the Backup Purchaser, as applicable]~~.

14. ~~13.~~ No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the ~~Acquired~~Equipment Assets on account of the filing or pendency of the Chapter 11 Case or the consummation of the Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate section 525 of the Bankruptcy Code.

D. ~~C.~~ **No Successor or Transferee Liability**

15. ~~14.~~ Upon the Closing Date, except as provided in the Purchase Agreement~~[or the Backup Purchase Agreement]~~, the entranceentry of this Order and the approval of the terms of the Purchase Agreement~~[and the Backup Purchaser Agreement]~~ shall mean that the Purchaser~~[or the Backup Purchaser]~~ (and any of its affiliates, successors, or assigns), as a result of any action taken in connection with the Purchase Agreement~~[or the Backup Purchase Agreement]~~, the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction~~and the assumption and assignment of the Assumed Contracts~~, or the transfer or operation of the AcquiredEquipment Assets, shall not be deemed to: (a) be a legal successor or successor employer to the Debtor (including with respect to any health or benefit plans), or otherwise be deemed a successor to the Debtor, and shall instead be, and be deemed to be, a new employer with respect to all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (b) have, *de facto*, or otherwise, merged or consolidated with or into the Debtor; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtor or the enterprise of the Debtor, including, in the case of each of (a)-(c), without limitation, (i) within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq.) (“WARN”), Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq. or (ii) in respect of (1) any environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the Closing Date (including, without limitation, the

presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, (2) any liabilities, penalties, costs, debts or obligations of or required to be paid by the Debtor for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or (3) any products liability law or doctrine with respect to the Debtor's liability under such law, rule or regulation or doctrine.

16. ~~15.~~ Without limiting the generality of the foregoing, and except as otherwise provided in the Purchase Agreement ~~[or the Backup Purchase Agreement]~~ and this Order, neither the Purchaser ~~[or the Backup Purchaser]~~ nor any of ~~[its][their respective]~~ affiliates shall have any responsibility for (a) any liability or other obligation of the Debtor related to the ~~Acquired~~ Equipment Assets or (b) any Claims against the Debtor or any of their predecessors or affiliates. By virtue of the Purchaser's ~~[or the Backup Purchaser's]~~ purchase of the ~~Acquired~~ Equipment Assets, neither the Purchaser ~~[or the Backup Purchaser]~~ nor any of ~~[its][their respective]~~ affiliates shall have any liability whatsoever with respect to the Debtor's (or its predecessors' or affiliates') respective businesses or operations or any of the Debtor's (or its predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental (including, but not limited to CERCLA), successor or transferee liability, *de facto* merger or substantial continuity, labor and employment (including, but not limited to, WARN) or products liability law, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including any liabilities or non-monetary obligations on account of the Debtor's employment agreements or health or benefit plans, any settlement or injunction or any liabilities

on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Equipment Assets prior to the Closing ~~or such later time as the Purchaser is assigned any Assumed Contract~~ (collectively, with the potential claims set forth in paragraph 15, “Successor or Transferee Liability”). The Purchaser ~~or the Backup Purchaser~~ would not have acquired the Acquired Equipment Assets but for the foregoing protections against Successor or Transferee Liability.

17. ~~16.~~ None of the Purchaser ~~, the Backup Purchaser,~~ or ~~its~~~~[[their respective]~~ affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by the Debtor or any of its estate, predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Purchase Agreement ~~or the Backup Purchase Agreement~~ and the entry into and consummation of the sale of the Acquired Equipment Assets, except as expressly provided in the Purchase Agreement ~~or the Backup Purchase Agreement, as applicable~~ and this Order.

18. ~~17.~~ Nothing in this Order ~~, ]~~ or ~~the~~ Purchase Agreement ~~, or the Backup Purchase Agreement~~ shall require the Purchaser ~~, the Backup Purchaser,~~ or any of ~~its~~~~[[their respective]~~ affiliates to (a) continue or maintain in effect, or assume any liability in respect of any employee, former employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtor is a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement

or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

19. ~~18.~~ No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtor that are approved by this Order, including, without limitation, the Purchase Agreement~~[, the Backup Purchase Agreement,]~~ and the Sale Transaction.

**E. ~~D.~~ Good Faith; Arm's Length Sale**

20. ~~19.~~ The Purchase Agreement~~[ and the Backup Purchase Agreement each]~~ has been negotiated and executed, and the transactions contemplated thereby, including, without limitation, the Sale Transaction, ~~the assumption and assignment of the Assumed Contracts,~~ are and have been undertaken, by the Debtor, the Purchaser~~[ the Backup Purchaser,]~~ and ~~their~~ and its respective representatives at arm's length, without collusion and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction or any term of the Purchase Agreement~~[ or the Backup Purchase Agreement]~~, and shall not permit the unwinding of the Sale Transaction. The Purchaser~~[ and the Backup Purchaser each]~~ is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections under section 363(m) of the Bankruptcy Code.

21. ~~20.~~ Neither the Debtor~~[,]~~ nor~~]~~ the Purchaser~~[, nor the Backup Purchaser]~~ has engaged in any conduct that would cause or permit the Purchase Agreement~~[, the Backup Purchase Agreement,]~~ or the transactions contemplated thereby, including, without limitation, the Sale Transaction, to be avoided, or for costs, or damages or costs, to be imposed, under

section 363(n) of the Bankruptcy Code. The consideration provided by the Purchaser~~[or the Backup Purchaser]~~ for the Acquired Equipment Assets under the Purchase Agreement is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

**~~E. Assumption and Assignment of the Assumed Contracts~~**

~~21. Except as otherwise expressly provided in the Purchase Agreement~~[or the Backup Purchase Agreement, as applicable,]~~ or this Order, upon the Closing Date, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtor is authorized to (a) assume each of the Assumed Contracts and assign the Assumed Contracts, set forth in Exhibit 2 (the “Assumed Contracts Exhibit”) attached hereto to the Purchaser~~[or the Backup Purchaser, as applicable]~~ free and clear of all Claims and (b) execute and deliver to the Purchaser~~[or the Backup Purchaser, as applicable]~~ such documents or other instruments as may be reasonably requested by the Purchaser~~[or the Backup Purchaser]~~ to assign and transfer the Assumed Contracts.~~

~~22. The Cure Costs listed on the Assumption and Assignment Notice and Assumed Contracts Exhibit are the sole amounts necessary to be paid upon assumption and assignment of the Assumed Contracts under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code. Upon the payment of the Cure Costs, if any, the Assumed Contracts shall remain in full force and effect, and no default shall exist under the Assumed Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default. The Cure Costs shall not be subject to further dispute or audit, including, without limitation, any based on performance prior to the Closing Date, irrespective of whether such Assumed Contract contains an audit clause. After the payment of the Cure Costs, following the~~

~~Closing Date the Debtor shall have no further liabilities to the counterparties to the Assumed Contracts.~~

~~23. In the event of a dispute as of, or after, the Closing Date regarding assumption and assignment or Cure Costs of any executory contract or unexpired lease proposed to be an Assumed Contract, the assumption and assignment of such executory contract or unexpired lease, and payment of any applicable Cure Costs, shall be made upon (a) the entry of an order of the Court resolving any such dispute and upon the election of the Purchaser[ or the Backup Purchaser] to retain such executory contract or unexpired lease as an Assumed Contract, or (b) the consensual resolution of such dispute as may be agreed by the Purchaser[ or the Backup Purchaser] and such counterparty and, solely with respect to disputes regarding Cure Costs, the Debtor. Upon an election of the Purchaser[ or the Backup Purchaser] to designate an executory contract or unexpired lease as an Excluded Liability under the Purchase Agreement[ or the Backup Purchase Agreement], the Purchaser[ or the Backup Purchaser, as applicable] shall have no liability whatsoever to the counterparty to such executory contract or unexpired lease or to the Debtor as it relates to such Excluded Liability.~~

~~24. To the extent any non-Debtor party to an Assumed Contract has failed to timely object to a proposed Cure Cost, such Cure Cost has been and shall be deemed to be finally determined in the amount listed on the Assumption and Assignment Notice and Assumed Contracts Exhibit and any such non-Debtor party shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Cost at any time. The non-Debtor party to an Assumed Contract is forever bound by the applicable Cure Cost and, upon payment of the Cure Cost as provided herein and in the Purchase Agreement, is hereby enjoined from taking any~~

~~action against the Debtor[,][ or] the Purchaser[, or the Backup Purchaser] with respect to any claim for cure under the Assumed Contract.~~

~~25. Any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect.~~

~~26. Any party that may have had the right to consent to the assignment of an Assumed Contract is deemed to have consented to such assignment, including for purposes of sections 365(e)(1)(B) and 365(e)(2)(A)(ii) of the Bankruptcy Code and otherwise, if such party failed to object to the assumption and assignment of such Assumed Contract.~~

~~27. Each Assumed Contract constitutes an executory contract or unexpired lease under the Bankruptcy Code and all requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser[ or the Backup Purchaser] of the Assumed Contracts have been, or will be, satisfied. Upon the Purchaser's[ or the Backup Purchaser's] assumption of the Assumed Contracts in accordance with the terms hereof, in accordance with sections 363 and 365 of the Bankruptcy Code, (a) the Purchaser[ or the Backup Purchaser, as applicable] shall be fully and irrevocably vested with all rights, title and interest of the Debtor under the Assumed Contracts, (b) the Purchaser[ or the Backup Purchaser, as applicable] shall be deemed to be substituted for the Debtor as a party to the applicable Assumed Contracts, and (c) the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts.~~

~~28. The Purchaser[ and the Backup Purchaser each] has demonstrated adequate assurance of future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.~~

~~29. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Debtor[;][ or] the Purchaser[, or the Backup Purchaser] as a result of the assumption and assignment of the Assumed Contracts. Subject to the terms of the Purchase Agreement[ or the Backup Purchase Agreement], the validity of the transactions contemplated therein, including, without limitation, the Sale Transaction, shall not be affected by any dispute between the Debtor and the non-Debtor party to an Assumed Contract regarding the payment of any amount. Upon assignment to the Purchaser[ or the Backup Purchaser], the Assumed Contracts shall be valid and binding, in full force and effect and enforceable by the Purchaser[ or the Backup Purchaser] in accordance with their respective terms.~~

~~30. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Assumed Contracts are forever barred and permanently enjoined from raising or asserting against the Debtor[;][ or] the Purchaser[, or the Backup Purchaser] any assignment fee, default, breach or claim of pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts existing as of and including the Closing Date under the Purchase Agreement[ or the Backup Purchase Agreement] or arising by reason of the consummation of the transactions contemplated therein, including, without limitation, the Sale Transaction.~~

~~31. All counterparties to the Assumed Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser[ or the Backup Purchaser], and shall not charge the Debtor[;][ or] the Purchaser[, or the Backup Purchaser] for any instruments, applications, consents or other documents that may be required or requested by any~~

~~public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale of the Acquired Assets.~~

#### F. Related Relief

22. ~~32.~~ Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale Transaction contemplated by the Purchase Agreement~~[or the Backup Purchase Agreement]~~.

23. ~~33.~~ No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the ~~Acquired~~Equipment Assets sold, transferred or conveyed to the Purchaser~~[or the Backup Purchaser]~~ on account of the filing or pendency of the Chapter 11 Case or the consummation of the sale of the ~~Acquired~~Equipment Assets.

24. ~~34.~~ Except as expressly provided in the Purchase Agreement~~[or the Backup Purchase Agreement]~~, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtor or its estate from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any ~~Excluded Assets or Excluded Liabilities~~assets or liabilities not constituting an Equipment Asset.

25. ~~35.~~ All entities that are presently, or on the Closing Date may be, in possession of some or all of the ~~Acquired~~Equipment Assets are hereby directed to surrender possession of the ~~Acquired~~Equipment Assets to the Purchaser~~[or the Backup Purchaser, as applicable]~~ on or prior to the Closing Date or such later date that such party and the Purchaser~~[or the Backup Purchaser, as applicable]~~ mutually agree.

26. ~~36.~~ To the extent this Order is inconsistent with any prior order or pleading filed in the Chapter 11 Case related to the Motion, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Purchase Agreement~~[or the Backup Purchase Agreement]~~, the terms of this Order shall govern.

27. ~~37.~~ This Order~~[,] and~~ the Purchase Agreement~~[, and the Backup Purchase Agreement]~~ shall be binding in all respects upon all pre-petition and post-petition creditors of the Debtor, all interest holders of the Debtor, ~~all non-Debtor parties to the Assumed Contracts, any Court-appointed~~any Court-appointed committee, all successors and assigns of the Debtor and its affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Chapter 11 Case or upon a conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the Purchase Agreement~~[, the Backup Purchase Agreement,]~~ and Sale Transaction shall not be subject to rejection or avoidance under any circumstances by any party. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Order and the rights granted to the Purchaser~~[or the Backup Purchaser]~~ hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest. For the avoidance of doubt, the Debtor’s inability to satisfy in full all administrative expense claims of the Debtor’s estate shall not be a basis for termination, rejection or avoidance (as applicable) of the Purchase Agreement~~[, the Backup Purchase Agreement,]~~ or the Sale Transaction.

28. ~~38.~~ This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order~~[,] and~~ the Purchase Agreement~~[, and the Backup Purchase Agreement]~~, all amendments thereto and any waivers and

consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchaser~~[or the Backup Purchaser]~~, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction, including any and all disputes with any counterparty to any executory contract or unexpired lease of the Debtor ~~(including, without limitation, disputes with respect to assumption and assignment of any Assumed Contracts or any cure disputes)~~ and any party that has, or asserts, possession, control or other rights in respect of any of the Acquired Equipment Assets; *provided, however*, that, in the event the Court abstains from exercising or declines to exercise such jurisdiction with respect to the Purchase Agreement,~~[the Backup Purchase Agreement]~~, the Bidding Procedures Order, or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Acquired Equipment Assets, to protect the Debtor and its assets, including the Acquired Equipment Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to sections 105(a) or 363 of the Bankruptcy Code (or other applicable provisions) necessary to transfer the Acquired Equipment Assets to the Purchaser~~[or the Backup Purchaser]~~.

29. ~~39.~~ At any time prior to the Closing Date, ~~[(i)]~~ the Purchaser or the Debtor may terminate the Purchase Agreement pursuant to the terms thereof without any penalty or liability to the Purchaser or the Debtor (or its estate), except as set forth in the Purchase Agreement~~[and (ii) the Backup Purchaser or the Debtor may terminate the Backup Purchase Agreement pursuant to the terms thereof without any penalty or liability to the Purchaser or the Debtor (or its estate); except as set forth in the Backup Purchase Agreement]~~.

30. ~~40.~~ The Purchase Agreement~~[, the Backup Purchase Agreement,]~~ and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

31. ~~41.~~ This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply; (b) the Debtor is not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtor~~[,] and~~ the Purchaser~~[, and the Backup Purchaser]~~ may, each in its discretion and without further delay, take any action and perform any act authorized under this Order.

32. ~~42.~~ The Purchaser~~[ and the Backup Purchaser]~~ shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code, to give any notice permitted by the Purchase Agreement~~[ or the Backup Purchase Agreement]~~ or to enforce any of ~~[its][respective]~~ remedies under the Purchase Agreement~~[ or the Backup Purchase Agreement]~~ or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

33. ~~43.~~ The provisions of this Order are non-severable and mutually dependent.

34. ~~44.~~ All time periods set forth in this Order shall be calculated in accordance with

Bankruptcy Rule 9006(a).